

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

| | | |
|------------------------------|---|------------------|
| FONDY CARTER, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Civil Action No. |
| |) | 05-11335-NMG |
| DR. NEWLAND, DR. SPADA, |) | |
| P.A. JENESCKO, P.A. AJIGIAN, |) | |
| P.A. BROOKS, AND MR. MENON, |) | |
| |) | |
| Defendants. |) | |

DEFENDANTS' MOTION TO DISMISS

Now come defendants, Dr. Newland, Dr. Spada, P.A. Jenesco, P.A. Ajigian, P.A. Brooks and Mr. Menon, by and through their Attorney, Michael J. Sullivan, United States Attorney for the District of Massachusetts, and file this Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) and (6). Defendants request the Court to dismiss the Complaint because of Plaintiff's failure to state a claim upon which relief may be granted, and the Court lacks subject matter jurisdiction. In support of this Motion Defendants incorporate the attached Memorandum in Support of their Motion to Dismiss.

WHEREFORE, based upon the arguments and authorities

submitted in the attached Memorandum of Law, Defendants respectfully move this Court to grant his Motion to Dismiss.

Respectfully submitted,

UNITED STATES OF AMERICA,

MICHAEL J. SULLIVAN,
UNITED STATES ATTORNEY

By: /s/ Rayford A. Farquhar
Rayford A. Farquhar
Assistant U.S. Attorney
1 Courthouse Way, Ste. 9200
Boston, MA 02210
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CERTIFICATE OF SERVICE

Suffolk, ss.

Boston, Massachusetts
January 25, 2006

I hereby certify that a true copy of the above document was served by First Class Mail upon the Pro Se plaintiff, Fondy Carter, FCI Ashland, P.O. Box 6001, Ashland, KY 41105.

/s/ Rayford A. Farquhar
Rayford A. Farquhar
Assistant U.S. Attorney

CERTIFICATION OF COMPLIANCE WITH LOCAL RULE 7.1(A)(2)

I was unable to contact the Pro Se plaintiff regarding this Motion to Dismiss because he is incarcerated in Kentucky.

/s/ Rayford A. Farquhar
Rayford A. Farquhar
Assistant U.S. Attorney